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1908, in the person of William Allen Jenner, a New York lawyer, speaking in his own name. Mr. Jenner had already got the ear of Congress by the private publication in 1907 of a masterly analysis of the bill entitled *The publisher against the people, a plea for the defense*, to be followed after the Hearings by *The octopus*, similarly issued. Under his penetrating probe, the proceedings broke up and turned into a general rat-hunt by all aboard. At the end, the importation right was back where it ought to be, the disposal section resumed its traditional tenor in the grant, "To print, reprint, publish, copy, and vend the copyrighted work," and many other nests were cleared out.

One last stand was yet to be made. The Supreme Court on June 1, 1908, had affirmed the lower court decisions in the Bobbs-Merrill and Scribner cases, even though in January, 1907, the publishers had changed their "agreement" to a "recommendation," without, however, altering coercive practices. Thus the publisher could not by mere notice limit the price of resale, nor after the first vending exercise any further right. The final drive, made at the critical Hearing of Jan. 20, 1909, was in the effort to insert the following clause:

That subject to the limitations and conditions of this act copyright secured hereunder shall be entitled to all the rights and remedies which would be accorded to any other species of property at common law.

Here again appeared Mr. Jenner for the public, joined by Mr. Parkinson, who, as

already seen, was still keeping his vigil in 1916.

This clause was to revive an old claim of the Stationers' Company of London, which, under the aegis of the Star Chamber, carried so high a hand for a century and a half from its charter in 1556. Since 1710 when the Statute of Anne, the first copyright act, went into effect, all copyright in published works has been statutory. So finally decided the House of Lords in 1774. In this spirit the American Constitution was written and the Act of 1790 so construed by the Supreme Court in 1834 and repeatedly since. The effect of the clause would probably have been to upset the Bobbs-Merrill verdict. It failed, and the bill only when so amended was signed by President Roosevelt on the last day of his second term in 1909.

The end of the American Publishers' Association came in 1914 with the payment of \$140,000 in damages following the third unanimous verdict of the Supreme Court Dec. 1, 1913, in favor of Macy's.

And now after all this history, with the fate of its sire full before its eyes, the young National Association of Book Publishers, our nativity greetings hardly dead on the air, dashes up on the old steed, with the prettiest trappings the best copyright saddler in America could give him, determined once more to stay the free flow of the world's thought our way, thus begging American art, science and scholarship to fill a private till.

COPYRIGHT—REPLY TO DR. M. L. RANEY

By FREDERIC G. MELCHER, *Executive Secretary, National Association of Book Publishers*

FOURTH GENERAL SESSION

I have asked President Root for the opportunity to make reply to Dr. Raney's discussion on copyright in an earlier session, not so much to argue the details of the Copyright Bill as to criticize the spirit in which his comment on the book-trade was offered.

His speech was called "A Primer of Copyright." This suggested to me, while being delivered, the following paraphrase of Kipling's well-known verse:

"If the book-trade were as here it seems,
And not the book-trade of my dreams,
But only intrigue, graft and taint,
If the book-trade *were*,
But—the book-trade ain't."

Like Mayor Hylan in his attitude toward the transportation interests in New York, Dr. Raney believes that all who have had to do with copyright from the publisher's angle are

to be under suspicion at every turn and ranked with the sinister interests.

In order to paint the publishers in darkest colors, it seemed necessary in his argument to explain the Authors' League's connection with the Bill. This he did by stating that the Authors' League was but parade bunting stretched out in the publishers' interests, to be taken down when the issue was over. This unfair and inaccurate criticism of the Authors' League is entirely out of agreement with the facts as known to all. The Authors' League is a large independent organization with an effective record, and no publisher is on its committee. In the preliminary work of arranging for a revision of copyright, the hard work was done by Eric Schuler, secretary of the League, who should be given all praise, and the first draft of the Bill was drawn by the attorney of the League.

The inaccuracy of the statement that the publishers molded the new Copyright Bill is shown by the fact that three out of the four principal workers in the drafting of the Bill were not publishers at all. One of Mr. Raney's friendly little references to the people who did this work is in one of his letters where he refers to Major Putnam and Mr. Bowker as the "Gold Dust Twins" of copyright. Perhaps I will accept that reference, because, if it comes to copyright matters, these men have done the hard work and they have done clean work.

Lest it be considered that there is something eccentric in believing that the present Bill has been drawn with an attempt at justice to all parties, it should be pointed out that after very careful examination, Dr. Röthlisberger, Secretary of the Berne convention, approved the phrase under criticism, and in fact said that he had suggested the same solution to the Canadian Legislature in a comment on the new Canadian law. Dr. Raney seemed to believe that the publishers do not like the reference to copyright in the American Constitution, but this point in his argument did not seem clear. Publishers are not mentioned in the Constitution, neither are booksellers or libraries, and the Copyright Bill is merely intended to give all parties their proper protection in order that the author and public may be well served.

In a recent letter to our office, Dr. Raney wrote: "As to the washing of dirty linen, my reference was to the necessary review of the record of the American Publishers' Association, which, in its struggle for monopoly, suicided to escape the gallows. To me that is dirty linen, but if it is shoved under our nose we will wash it." This he has presumably attempted to do in his brief history of the American Booksellers' Association and the original American Publishers' Association in their attempt to put stability into the American book distribution machinery, by finding some method of standardizing prices. If that is a culpable effort, the publishers cheerfully take the responsibility. Everyone in this audience who is familiar with book-trade conditions twenty-five years ago will know how necessary some such action was. Bookstores were blinking out under pressure of cut-throat competition and new ones were not starting to take their places. Certainly there was nothing for author or public to gain from such a condition, and it is worth recording that, although the effort finally came to a legal disaster, the atmosphere was clarified during the discussion and that, in spite of the cost, the effort was worth making. If legal defeat is a proof of sinister intent, then those who have been favoring the Child Labor Law in Washington should also be under fire.

Dr. Raney has a good deal to say about monopoly, as if that very word proved that there was a plot against the public. He should keep in mind that the very essence of copyright is monopoly and that, as authors continue to need publishers and seek for them, and, as probably half the books published are conceived in publishing offices, monopoly is a necessary part of the situation. Libraries on their part have monopoly, even though bookstores do not. Authors sometimes avoid having publishers, but it has not yet been claimed that they find advantage in the other system. Nine-tenths of the books that libraries buy—probably more than nine-tenths—are of American origin and their copyright gives some publisher a monopoly. The justice of this has not been questioned in Dr. Raney's report.

It should not be forgotten that it may

matter to the author whether the book is bought in the English edition or bought here—the author's income does not depend upon the percentage he gets on one sale but on the total number of sales. If an English author can get five times as many sales in this country by having a publisher actively interested in his success, he is better off than if a small number of orders came from those libraries most actively following the English announcements. This curtailment of the English author's opportunity is just what this "buy in England" campaign brings about. The owner of a patent in the American market does not suffer competition from the same machine made in England. The purchaser of the dramatic or movie rights for the American market does not suffer because of importations. But the American publisher is questioned because he argues that it is better for all hands that there be someone with full authority to promote a given item in this area.

We should not forget that American authors also are anxious to get substantial hearings in England, and that these hearings are obtained by an English publisher's promotion and not by casual hearings of a few copies going to that country.

That authors appreciate the importance of having the undivided support of publishers and do not stand suspicious of every business house is shown in a recent signed statement by a group of English authors, who, in commenting on the situation that developed in connection with Tolstoi's works, maintained that no author could get a proper hearing without a publisher and that "it is practically impossible to engage modern capital in publishing or any other enterprise without property rights."

Just what the Bill provides in the way of free access to the other markets for the libraries should be noticed. Only books in English fall under this restriction, and only those books in English which are registered at Washington by an American publisher as

having been duly published in this country. These might perhaps be ten per cent of the English publications at the most. The book thus being registered, the library can still obtain the English edition by filing its request with the American publisher, and if the publisher does not acknowledge and file the order within ten days, the library can order direct. This English edition would be supplied by the American publisher at a price equivalent to the English price.

At a hearing before the Senate Committee last December, Dr. Raney gave figures showing the comparative cost of twenty-five books in England and America. These prices, he stated, were supplied by a western library of fifty thousand volumes. Investigation proved that while the English prices were so supplied, the American prices had been obtained by Dr. Raney by writing to the individual publishers, who on such orders quoted the books at ten per cent off, plus postage. This figure would constitute about as high a price as could be given in any showing, with the natural result that the comparison was as bad as possible. Certainly there is nothing in the present discussion of one small phrase of an important Bill which need lead to arguments of such a nature.

The new Bill has the approval of the leading world authority on copyright, the friendly comment from England and Canada, and has had the advantage of being drafted by four recognized experts in copyright law. Under the circumstances, the publishers are surprised at an attack of such bitterness on their standing. American publishing is making good strides forward in the character and variety of books and the ability with which the needs of this great market are met. In fact, the publishers take pride in being publishers, as they also take pleasure in their relations with all groups who have to do with book distribution. I wish to say finally in the phraseology of Christopher Morley that "We may be inept, but we are not sinister."